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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,152	08/27/2004	Martin PETERSSON	7589.197.PCUS00	5151

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NOVAK DRUCE AND QUIGG LLP (Volvo)
1000 LOUISIANA STREET
FIFTY-THIRD FLOOR
HOUSTON, TX 77002

EXAMINER

MERKLING, MATTHEW J

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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03/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/711,152

Applicant(s)

PETERSSON ET AL.

Examiner

MATTHEW J. MERKLING

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1795

/M. J. M./
Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: On pages, 2 and 3, Applicant argues that the term 'microporous', when used to describe a ceramic material, only encompasses pores that are on the order of Angstroms, and not microns. The examiner respectfully disagrees with this argument. Since Applicant did not explicitly define the term 'microporous' in the specification, the examiner has given the term its broadest reasonable interpretation (see MPEP §2111.01(IV)). It is the examiner's position that microporous is a generic term that can include pore sizes on the order of micrometers.

On page 4, Applicant argues that the combination of Ogata and Van Andel does not meet the claim 11 limitations because Van Andel teaches a polymer membrane, as opposed to a ceramic membrane. The examiner respectfully disagrees with this argument. Van Andel teaches that the membrane can comprise ceramics in addition to the polymer (page 2 lines 15-26).

On page 4, Applicant argues that Binker teaches a pore size for a material other than ceramic, and is therefore not combinable with the ceramic membrane of Ogata. The examiner respectfully disagrees with this argument. Binker teaches a sol dispersed on a support. As defined by Binker, a sol is a deposition of a colloidal ceramic dispersion (see col. 1 lines 53-59). As such, it is the examiner's position that the pore size of Ogata, is therefore combinable with the pore size of Binker.

On pages 5 and 6, Applicant argues that the examiner has assumed too much in stating that the material of Kusakabe would possess the same characteristics (with respect to the transmission of CO and the blocking of H₂). The examiner respectfully disagrees with this argument. It is the examiner's position that since the material of Kusakabe (such as a ZSM-5 zeolite, see page 5 lines 7-10) is identical to that of the Applicant's material, and the pore sizes are identical to that of Applicant's (3-10 Angstroms, see paragraph 13), the characteristics of the material in Kusakabe would exhibit the same hydrogen transmission/blocking as that of Applicant's membrane. Furthermore, while the characteristics of hydrogen transmission of the ceramics of Kusakabe and the instant invention may differ at different operating conditions, such features do not distinguish an apparatus from the prior art. In other words, the method in which the membrane is used does not confer patentability to the claimed apparatus (see MPEP §2114,2115).